

JPA / ECS File No.: 06-019 I  
AG Contract No.: KR06-0885TRN  
Project: I-17, Jomax/Dixileta TI  
Section: I-17 Jomax Road to Norterra  
Parkway, and City of Phoenix North  
Transfer Station Access Road  
TRACS No.: H6178 01C/ 01D  
Budget Source Item No.: City Funding

119950..

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF PHOENIX

THIS AGREEMENT is entered into this date November 9<sup>th</sup>, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, acting by and through its CITY MANAGER (the "City") The State and City are collectively referred to as the "Parties").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section §28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by City Charter Chapter II, Section 2.i. to enter into this Agreement and has by ordinance, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State and the City through an intergovernmental agreement (JPA 05-133), are advancing the design, rights of way acquisition and construction of a new traffic interchange (TI) located at I-17 and Dixileta Drive. As a result of said work, the City agrees to pay for the necessary realignment of the City's North Transfer Station access road. In addition, the City requests the State include the 30% design stage of Jomax Road from I-17 to Norterra Parkway, collectively herein referred to as "the Project", all at the City's expense. Costs are estimated at \$835,720.00, and shown in Exhibit "A", attached hereto and made a part hereof. The purpose of this Agreement is to define each party's responsibility associated with the Project. The new alignment of the City's North Transfer Station Access Road is depicted on Exhibit B, attached hereto and made a part hereof.

4. Incident to the Project, the State, at its sole cost, desires to construct a temporary east access road, with an east/west portion along the Jomax Road alignment within existing City rights of way, without the necessity of obtaining from the City any permits, approvals or temporary construction easement. This east/west portion of the temporary east access road will be in Aggregate Base (AB) form, and is to only provide access for parcels on the northeast corner of Jomax Road and I-17, described on Exhibit C, attached hereto and made a part hereof. The City will assume operation and maintenance of this east/west portion along the Jomax Road alignment at the completion of the Project and its acceptance by the State.

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NO. 28545  
Filed with the Secretary of State  
Date Filed: 11/9/06  
Janice K. Lawrence  
Secretary of State  
By: [Signature]

5. Also incident to the Project, the State desires to construct, at its sole cost, a north/south portion of the temporary east access road, which will be north and perpendicular from the temporary east/west AB alignment along Jomax Road, also as described on Exhibit C. This currently involves a 33' wide easement per US Patent no. 1143708 dated April 2, 1954, for "roadway and public utilities purposes." The State is presenting a recommendation to the State Transportation Board that it approve, by resolution, bringing said easement into the State Highway System for roadway purposes. The State will retain ownership of this north/south portion of the temporary east access road while the City operates and maintains it at the completion of the Project and its acceptance by the State.

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The State shall:

a. Upon execution of this Agreement, agree to be the authorized agent for and on behalf of the City and invoice the City \$835,720.00 for the estimated costs to accomplish the Project, which includes a fixed rate of 5% for the State's design and construction engineering administration costs. Should costs exceed this estimated amount, coordinate with the City and provide an interim billing.

b. Upon receipt of the City's estimated cost, retain and contract with professional design and environmental consultants (the "Consultants"), to prepare design documents and final environmental assessment (EA), including but not limited to Cultural Resource Surveys and studies and an Army Corps of Engineers Section 404 Permit.

c. Administer the Consultants contract and make all payments to the Consultants. Confer with the City on any design and environmental Consultant related contract modifications.

d. Provide all coordination as required, with Federal Highway Administration (FHWA) and other agencies affected by this Project, including required approvals as appropriate to this effort.

e. Provide the City the design documents for review and comment. Incorporate the City's comments and upon completion, provide the City a copy of the final design documents.

f. Upon completion of the final design, invoice or reimburse the City any difference between the initial estimated amounts received from the City and the actual costs associated with the preparation of the final design documents. Any additional design changes will include a fixed rate of 5% for the State's design, and construction engineering administration costs for Jomax Road and North Transfer Station access road.

g. Upon approval by the State and the City of the design documents, advertise for bids and award one or more construction contract(s) for the Project. Administer same, and make all payments to the contractor(s).

h. Upon the approval and by Resolution of the State Transportation Board, bring the north/south portion of the east access road as depicted in Exhibit C into the state highway system for construction. The State will retain ownership of said north/south portion of the temporary east access roadway upon completion.

i. Upon completion of the Project, relinquish operation and maintenance responsibilities of the north/south portion of the temporary east access road to the City, and shall allow the City to maintain and operate said portion of State right-of-way without the need of any additional encroachment permits or easements from the State.

j. Upon completion of the Project, provide a recapitulation of the Project costs, including, but not limited to: design, construction, and design/construction administration costs, and invoice or reimburse the City any difference between the estimated amount paid by the City, including fixed rates and fixed costs as shown on Exhibit A, and the actual costs of the Project.

k. Upon completion of the Project, coordinate with the City on inspection of the Project for final acceptance.

2. The City shall:

a. Upon execution of this Agreement, hereby designate the State as the authorized agent for and on behalf of the City and within 30-days of receipt of an invoice, remit to the State an amount of \$835,720.00 for the estimated costs to accomplish the Project, which includes a fixed rate of 5% for the State's design and construction engineering administration costs. Should costs exceed this estimated amount, coordinate with the State regarding an interim billing from the State.

b. Review and provide written comments to the State within 15 days of receipt of the initial design documents. Be responsible for any related design and environmental Consultant(s) claims for extra compensation.

c. Upon completion and receipt of the final design documents associated with the Project, be responsible for actual costs, including a fixed rate of 5% for the State's design administration costs. Remit any balance upon receipt of a final invoice from the State. Any design changes resulting in an increase of design costs will include a fixed rate of 5% for the State's design administration costs.

d. Allow ADOT to construct a temporary access road along the Jomax Road alignment within existing City rights of way as depicted in Exhibit C, without the necessity of obtaining additional permits, approvals or temporary construction easement.

e. Be responsible for any contractor claims for extra compensation due to delays or whatever reason, attributable to the City associated with the Project. In addition, be responsible for any and all change orders attributable to the City.

f. Upon completion of the Project, be responsible for operation and maintenance of that portion of the North Transfer Station Access Road from point of curve (POC) at Station 244+51.56 to the terminus at Station 247+65.36, as depicted on Exhibit B.

g. Upon completion of the Project and construction of the temporary east access road, including both the north/south portion and the east/west Jomax alignment as shown on Exhibit C, operate and maintain said roadways without the need of additional encroachment permits from the State to access the State's right-of-way on said north/south portion.

h. Upon completion and acceptance of the Project, be responsible for the actual costs incurred by the State for the Project. If necessary, reimburse the State within 30-days after receipt of an invoice, for any difference between the estimated amount paid by the City as shown on Exhibit A, including fixed rates and fixed costs, and the actual costs of the Project.

i. Upon completion of the Project, coordinate with the State on inspection of the Project for final acceptance.

### **III. MISCELLANEOUS PROVISIONS**

1. This Agreement shall remain in full force and effect until completion of the work contemplated herein and all reimbursements, provided however, that any provisions herein for maintenance provided by the City shall be perpetual. This Agreement may be cancelled at any time prior to the advertisements for design and environmental consultant contracts, with 30-days written notice to either party.

2. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to both Parties, who shall be afforded the same rights and interests under this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State or the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State or the City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

8. In the event of any controversy which may arise out of this Agreement, the parties hereto agree to abide by Arizona Revised Statutes Section 12-1518 as applicable.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, MD 616E  
Phoenix, AZ 85007  
FAX : 602-712-7424

City of Phoenix  
Street Transportation Director  
200 W. Washington - 5th floor  
Phoenix, AZ 85003-1611  
FAX : 602-495-2016

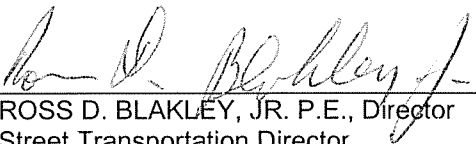
Arizona Department of Transportation  
Financial Management Services  
206 South 17<sup>th</sup> Avenue, Mail Drop 200B  
Phoenix, AZ 85007  
FAX : (602) 712-6672

10. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

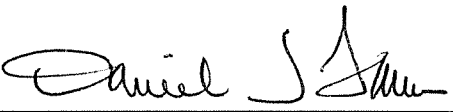
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**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.


**CITY OF PHOENIX**, a Municipal  
Corporation, Frank Fairbanks, City Manager

By   
ROSS D. BLAKLEY, JR. P.E., Director  
Street Transportation Director

**STATE OF ARIZONA**  
Department of Transportation

By   
DANIEL S. LANCE, P.E.  
Deputy State Engineer

ATTEST

By   
MARIO PANIAGUA  
City Clerk



Ghc/10/18/06 FINALDraft 8  
DLB/dlb/657631v1  
G:\06-019  
Phoenix design TI's

## JPA 06-019

### Exhibit "A"

Design of the North Transfer Station Access Road Connection;  
30% Design Stage of Jomax road (from I-17 to Norterra Parkway)  
and  
Construction of the North Transfer Station Access Road

ITEM	COST
Estimated Costs: Design of North Transfer Station Access Road	\$59,500.00
Estimated Costs: Design of Jomax Road to 30%	\$39,000.00
Estimated Costs: Construction of North Transfer Station Access Road (includes 14% construction engineering administration)	\$700,000.00
Estimated Costs: 5% Design and Construction Administration Fee	<u>\$37,220.00</u>
<b>TOTAL ESTIMATED COSTS</b>	<b>\$835,720.00</b>

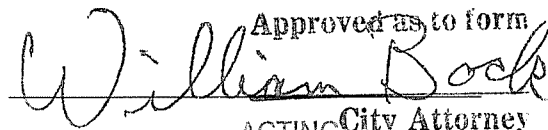

ATTORNEY APPROVAL FORM

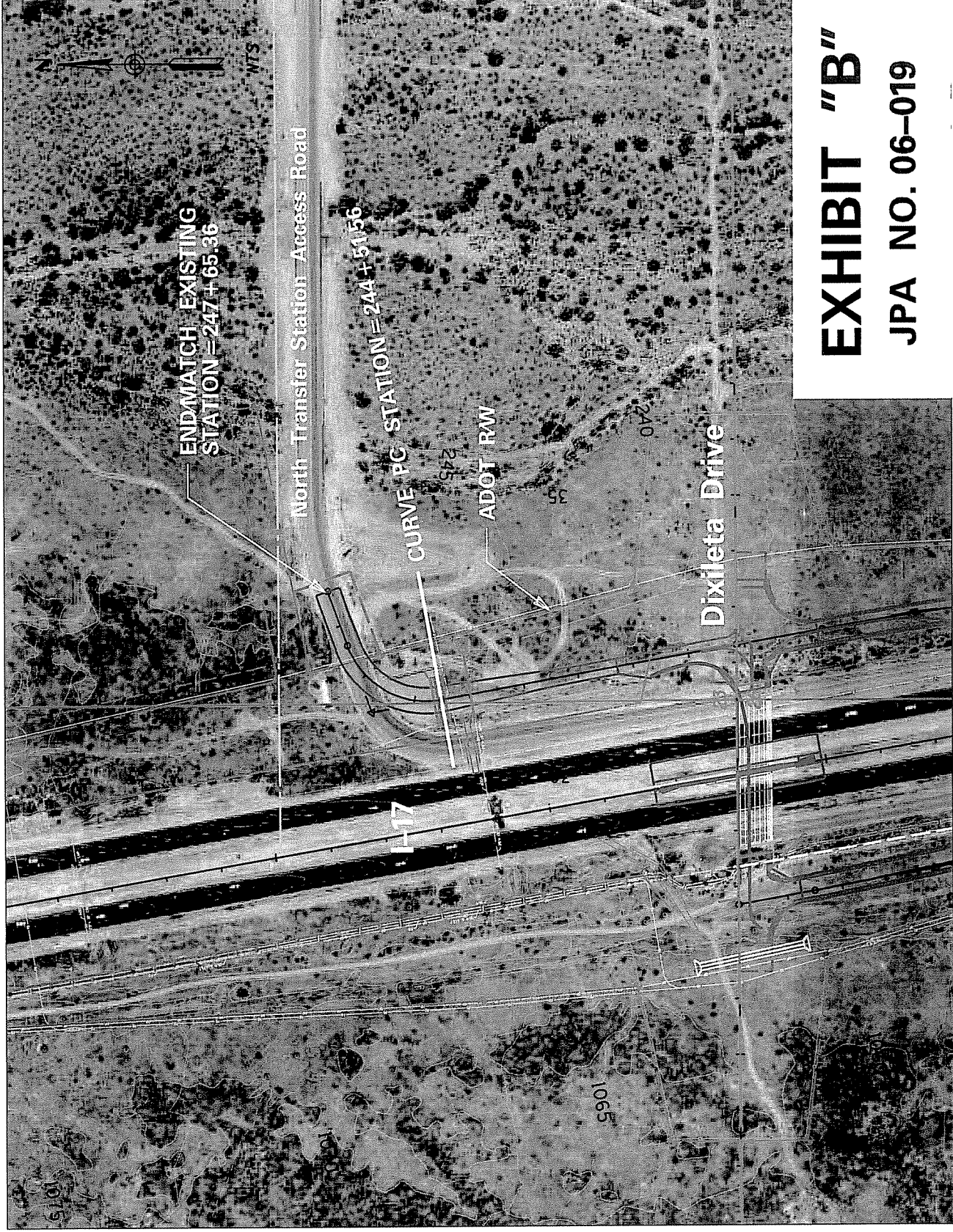
FOR THE CITY OF PHOENIX

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and THE CITY OF PHOENIX, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954, and declare this Agreement to be in proper form and within the powers and authority granted to City of Phoenix under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties to enter into said Agreement.

Dated \_\_\_\_\_, 2006

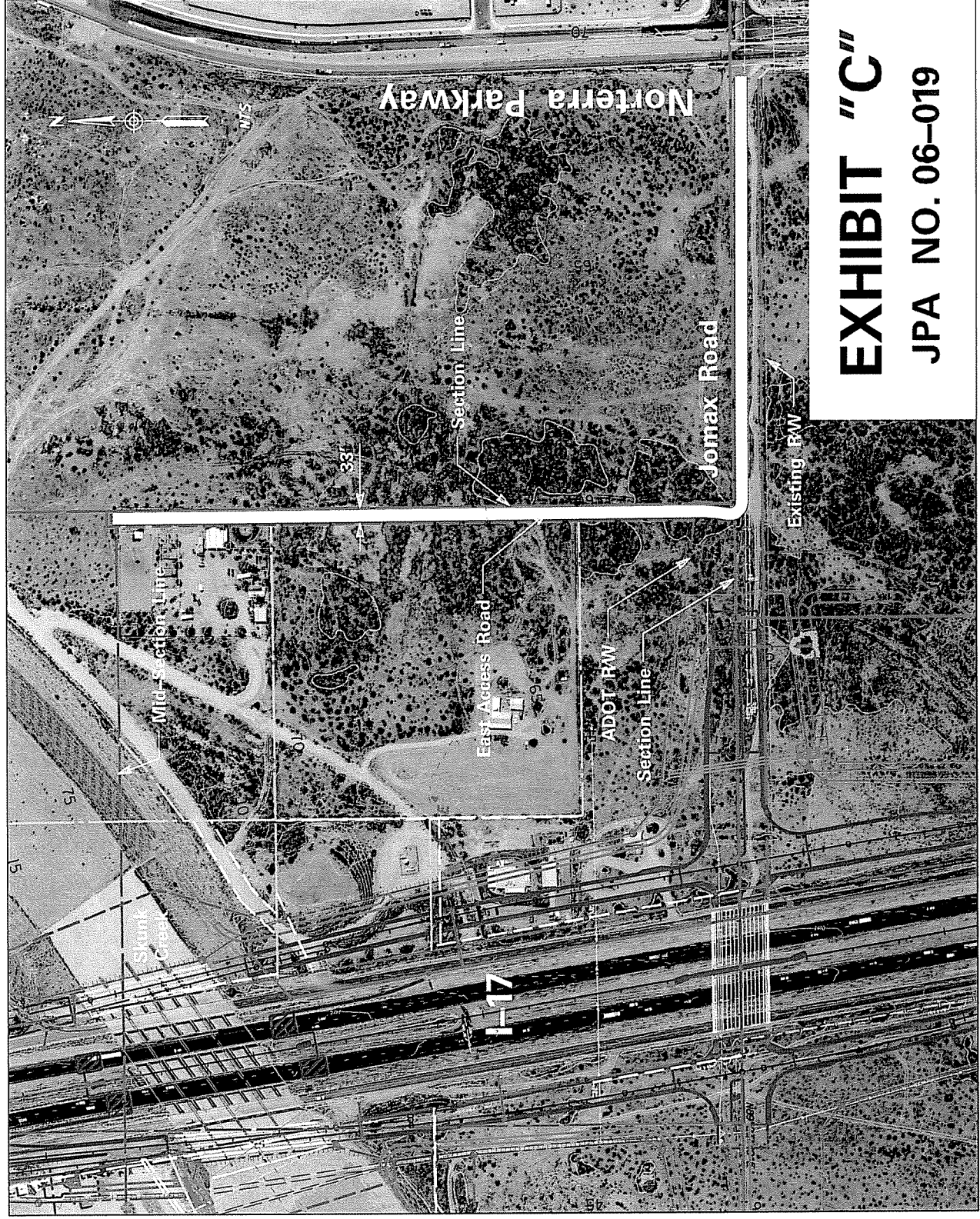
  
Approved as to form  
\_\_\_\_\_  
Attorney ACTING City Attorney  




## EXHIBIT "B"

JPA NO. 06-019





# EXHIBIT "C"

JPA NO. 06-019

**CITY OF PHOENIX  
REQUEST FOR COUNCIL ACTION**

Complete this form per O.P. 1.906 and A.R. 4.11.  
Refer to the City Council Agenda Process Reference Guide for Assistance

<b>ACTION REQUESTED</b>	Formal Action:		OR	Legal Document:	
	Bid Award <input type="checkbox"/> License Application <input type="checkbox"/> Public Hearing <input type="checkbox"/> Other <input type="checkbox"/>			Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/>  Emergency Clause? <input type="checkbox"/> (for use only w/ord. or res. requests)	
<b>IMPACTED DISTRICT(S)</b>	DISTRICT 2		<b>ADDITIONAL BACKUP MATERIAL SENT UNDER SEPARATE COVER?</b>		<input type="checkbox"/>
<b>SUBJECT</b>	INTERGOVERNMENTAL AGREEMENT WITH ADOT - NORTH TRANSFER STATION ACCESS RD & JOMAX RD 30 PERCENT DESIGN				
<b>REQUESTED AGENDA DATE</b>	10/4/2006	<b>PREPARED BY</b>	Name Briana Leon Department Street Transportation Phone 534-6999		
<b>APPROVALS</b>	Division Head:	J. Donald Herp, P.E.		If prepared for another department: Department Name:  Approval:	
	Department Head:	Ross D. Blakley, Jr., P.E.			
<b>BID AWARD INFORMATION</b>	Bid Surety Required? <input type="checkbox"/> Submitted by Low Bidder? <input type="checkbox"/> Contract Required? <input type="checkbox"/>		Performance Surety Required <input type="checkbox"/> Amount? _____ Requisition No. _____		
	Contract Amendment? <input type="checkbox"/> If Yes, Current Contract No. _____  <div style="display: flex; justify-content: space-between;"> <div>           Approved by: _____            Ordinance <input type="checkbox"/>            Resolution <input type="checkbox"/>            Formal Action <input type="checkbox"/> </div> <div>on Date: _____</div> </div>				
<b>BUDGET INFORMATION</b>	\$ 835,720.00		To Be Encumbered? <input checked="" type="checkbox"/>		
	Source of Funds:		Fiscal Year? <u>FY 06/07</u>		
	AHUR (0007) and 01 Bonds (3337)				
	Fund Center(s) (SAP-FM):		ST85100286-1 \$335,720.00 ST85100286-2 \$500,000.00		
	Commitment Item(s) (SAP-FM):		510030		
	Availability of Funds Approval		Lauri L. Wingenroth		
<b>CITY MANAGER'S OFFICE</b>	<b>Approved by</b> Thomas E. Callow, P.E. 9/14/06			CM Control No. <b>08</b>	
<b>CITY CLERK DEPARTMENT</b>	Council Action Taken: Adopted				
	Ordinance Number: S-33414		RCA No. 53489		
	Resolution Number:		Contract No.		
	Comments:		Meeting Date 10/4/2006		
			Item No. 89		

**ITEM****DISTRICT 2****INTERGOVERNMENTAL  
AGREEMENT WITH ADOT -  
NORTH TRANSFER STATION  
ACCESS RD & JOMAX RD 30  
PERCENT DESIGN**

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Request City Council authorization for the City Manager, or his designee, to enter into an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) for the design and construction of the City's North Transfer Station access road and the 30 percent design stage of Jomax Road from I-17 to Norterra Parkway, and for the City Controller to disburse funds.

The advance construction of Dixileta Drive Interchange at I-17 will require an access road to be constructed for the City's solid waste transfer station and water reclamation plant. The advance construction of the Dixileta Drive interchange coincides with the construction of the Jomax Road interchange that is two miles south. Currently, Jomax Road terminates at Norterra Parkway thus requiring design to connect Jomax Road to I-17.

ADOT will design, acquire right-of-way, and construct the North Transfer Station access road. The anticipated start of construction is winter 2006, with completion anticipated in winter 2007. ADOT will also design Jomax Road from I-17 to Norterra Parkway to a 30 percent design stage.

**Financial Impact**

Funding is available in the Street Transportation Capital Improvement Budget as follows:

ST85100286-1	AHUR	\$335,720.00
ST85100286-2	01 Bonds	\$500,000.00

**Previous Council Action**

On June 14, 2006, Council approved the advance construction of the Dixileta Drive Interchange.

**Citizen Notification**

Several public meetings have been held by ADOT to discuss the new interchanges and widening proposed for the I-17 area. ADOT will also conduct a public meeting during the design phase of the project.

ORDINANCE NO. S-33414

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE DESIGN AND CONSTRUCTION OF THE NORTH TRANSFER STATION ACCESS ROAD AND THE DESIGN OF JOMAX ROAD FROM INTERSTATE 17 TO NORTERRA PARKWAY; AND FURTHER AUTHORIZING THE CITY CONTROLLER TO DISBURSE FUNDS FOR PURPOSES OF THIS ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. The City Manager is authorized to enter into an intergovernmental agreement with the Arizona Department of Transportation for the design and construction of the North Transfer Station access road and the design of Jomax Road from Interstate 17 to Norterra Parkway.

SECTION 2. The City Controller is authorized to disburse funds in the amount of EIGHT HUNDRED THIRTY-FIVE THOUSAND SEVEN HUNDRED TWENTY DOLLARS (\$835,720.00) for purposes of this ordinance.

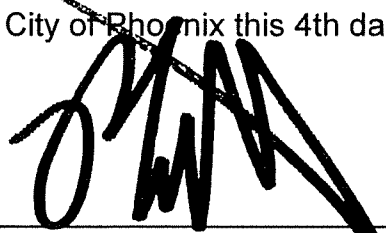
PASSED by the Council of the City of Phoenix this 4th day of October, 2006.



ATTEST:



City Clerk



MAYOR

CITY CLERK DEPT  
2006 OCT -3 AM 11:26

APPROVED AS TO FORM:

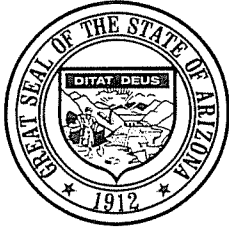
William Beck Acting City Attorney  
MB

REVIEWED BY:

Frank Carloni City Manager

DLB:tml/CM 8/10-4-06/664250v1

Ordinance No. S-33414



STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
CIVIL DIVISION  
TRANSPORTATION SECTION  
MEMORANDUM

Jeffrey T. Murray  
Assistant Attorney General

Direct: 602-542-8859  
Fax: 602-542-3646


**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR06-0885TRN (**JPA06-019**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED November 13<sup>th</sup>, 2006.

TERRY GODDARD  
Attorney General

  
JEFFREY T. MURRAY  
Assistant Attorney General

JTM:dgr  
Attachment  
#985562